

WORKING GROUP 4

SUBMISSION BY THE TRANSKEI GOVERNMENT IN RESPECT OF THE STRUCTURES/
AUTHORITIES RESPONSIBLE FOR GOVERNMENT IN TRANSKEI1. ESTABLISHMENT OF TRANSKEI AS A REPUBLIC:

Transkei is an independent Republic established by section 1 of the Republic of Transkei Constitution Act, 1976 (Act 15 of 1976), as read with the Status of Transkei Act, 1976 (Act 100 of 1976). It is made up of the following regions and districts:

<u>REGION/REGIONAL AUTHORITY AREA</u>	<u>DISTRICT</u>
(a) Eastern Pondoland	Bizana Maxesibeni Lusikisiki Siphaxeni Tabankulu
(b) Emboland	KwaBhaca Qumbu Tsolo
(c) Fingoland	Gcuwa Nqamakwe Tsomo
(d) Gcalekaland	Centane Gatyana Idutywa Xhora
(e) Maluti	Herschel Matatiele Mount Fletcher
(f) Tembuland	Engcobo Mqanduli Umtata
(g) Umzimkulu	Umzimkulu
(h) Western Pondoland	Libode Ngqeleni Umzimvubu
(i) Western Tembuland	Cofimvaba Cacadu Xalanga

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At the administrative level a number of authorities hold sway in each of the districts mentioned above.

2. BRANCHES OF GOVERNMENT:

A.1 THE EXECUTIVE:

Transkei is currently ruled by the Transkeian Defence Force. The executive authority, however, is made up of military officers and civilians. The executive authority in Transkei vests in the President who exercises such authority on the advice of the Military Council. The Military Council comprises regular officers of the T.D.F. and civilians and is constituted as follows:

- (a) the Commander of the T.D.F., who is the chairman;
- (b) such other members, not exceeding fourteen in number, as may be appointed by the President.

Members of the Military Council are Ministers of State who, with the exception of the Chairman of the Military Council, hold office during the pleasure of the President acting on the advice of the said Chairman. Ministers of State administer a number of State Departments. They are also responsible for the administration of a number of State corporations and other parastatal bodies. At present the person who is occupying the position of President is the one who was appointed in terms of section 4 of the 1976 Constitution Act at the time when a civilian government was still in control. The present incumbent is entitled to serve in that position for a period of seven years reckoned from the date of his initial appointment (see the definition of "the President" in section 1 of Decree No. 1 of 1988).

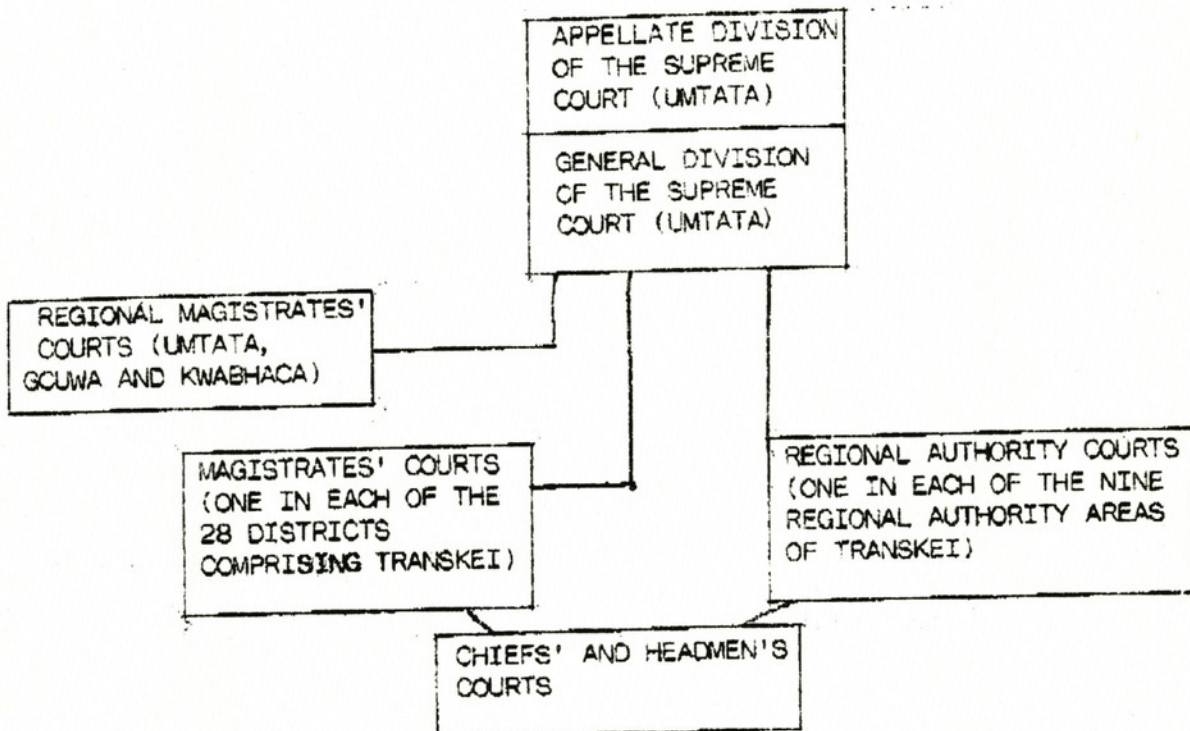
The Chairman of the Military Council discharges functions akin to those of a Prime Minister in a Republic. The Military Council is sovereign and is responsible for the overall administration of the country. The relationship between the Military Council and other organs of Government is set out in a number of statutes in terms whereof Transkei is governed.

A.2 THE JUDICIARY:

Transkeian courts are organized on two levels, superior and lower (or inferior). The Superior Court is the Supreme Court which comprises the general and appellate divisions. The lower are the regional and district magistrates' courts, regional authority courts, chiefs' courts and headmen's courts.

The structure of the courts can be represented schematically as follows:

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It will be observed from the above that the highest court in Transkei is the appellate division of the Supreme Court which has its seat in the capital, Umtata.

A.3 THE LEGISLATURE:

The legislative authority in Transkei vests in the President acting on the advice of the Military Council. The President makes laws by Decree for the peace, order and good government of Transkei and he is also empowered to amend or repeal any law. Both the Appellate Division and the General Division of the Supreme Court of Transkei have given recognition to the President's authority to legislate by Decree. Municipalities, tribal authorities and regional authorities also enjoy limited authority to introduce by-laws in respect of specified matters.

A.4 THE RELATIONSHIP OF EACH OF THE ABOVE TO EACH OTHER:

In so far as the courts and the executive are concerned there is a strict separation of powers. However, magistrates are appointed by central government and the Attorney-General exercises his powers, authorities and functions under the direction and control of the Minister of Justice (see the Public Service Act, 1978 (Act 43 of 1978) and section 51 of the Republic of Transkei Constitution Act, 1976 (Act 15 of 1976). It must also be noted that, in addition to their administrative duties, chiefs also perform judicial functions.

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As has already been explained above the Military Council discharges both the executive and legislative powers.

B. LEVELS OF GOVERNMENT:

B.1 REGIONAL GOVERNMENT:

There is no regional government in Transkei. However, at the rural level, regional authorities hold sway in respect of Regional Authority areas. Transkei is divided into nine regions. These are referred to in paragraph 1 above. Each regional authority area is headed either by a paramount chief or a senior chief. Regional authority areas exclude all areas which are administered by municipal authorities (see in this regard the definitions of "local authority" and "regional authority area" in section 73 of the 1976 Constitution Act).

B.2 LOCAL GOVERNMENT:

Urban areas in Transkei are administered by municipalities or municipal councils established or appointed in terms of the Municipalities Act, 1979 (Act 21 of 1979). Rural areas are divided into various administrative areas. Tribal authorities have been established. These tribal authorities are responsible for the administration of an amalgamated group of administrative areas. All the tribal authorities in a particular regional authority area fall under the jurisdiction of a regional authority. Tribal and regional authorities derive their existence from the provisions of the Transkei Authorities Act, 1965 (Act 4 of 1965). Municipalities discharge the same functions as the other bodies enjoying municipal status in South Africa.

Regional authorities and tribal authorities discharge functions relative to matters of local concern. Their powers are, however, not as wide as those of municipalities. They are accountable to the central government.

B.3 THE ROLE, POWERS AND FUNCTIONS OF TRADITIONAL LEADERS AT ALL LEVELS OF GOVERNMENT:

At the executive level chiefs are not appointed ex officio to any position. At the local level chiefs are involved in the general administration of tribal authority and regional authority areas. Chiefs also preside over regional authority courts and chiefs' courts. With regard to the law-making function chiefs do not play any role. Only those chiefs serving on the Military Council have any influence on the legislative process.

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B.4 RELATION OF EACH LEVEL OF GOVERNMENT TO EACH OTHER:

Municipalities and the two authorities responsible for the administration of rural areas, whilst having a lot in common, are not linked to each other at all. The law does not provide for interaction between these authorities. Even the Ministries responsible for the administration of the laws governing their affairs are different.

3. ROLE OF POLITICAL ORGANIZATIONS:

Political organizations are free to operate in Transkei. All political organizations which have previously been banned have now been unbanned. In view of the fact that a military government is in power in Transkei political organizations do not have any direct role to play in so far as the government of the country is concerned. They are, however, free to advise Government on a number of issues and also to make recommendations through the National Advisory Council.

4. STRUCTURE AND BRANCHES OF ADMINISTRATION:

Transkeian administration falls under the control of a number of State Departments. The following list sets out the names of these Departments and also the function which each one of them is supposed to discharge:

<u>DEPARTMENT</u>	<u>SUMMARY OF FUNCTIONS</u>
1. Military Council	To control and co-ordinate State activities and to oversee rural administration.
2. Agriculture and Forestry	To promote the agricultural and forestry potential of Transkei.
3. Auditor-General	To ensure regularity and accountability in the financial administration of public bodies and State Departments.
4. Defence	To defend the country against foreign aggression.
5. Education	To develop the intellectual, spiritual and physical potential of the individual to the advantage of the community and to administer education generally.

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<u>DEPARTMENT</u>	<u>SUMMARY OF FUNCTIONS</u>
6. Finance	To implement a sound financial, fiscal and monetary policy and also to control State finances and resources.
7. Foreign Affairs and Information	To promote Transkei's foreign interests.
8. Health	To render community health services and to control practitioners and hospitals.
9. Interior	To ensure that the status, citizens' rights and duties of the individual are protected.
10. Justice	To ensure an orderly community within the scope of the relevant enactments and legal principles.
11. Local Government and Land Tenure	To ensure the orderly development of communities through sound local government and land tenure policies.
12. Commerce, Industry and Tourism	To promote the industrial, economic and tourism development of Transkei.
13. Transkeian Police	To maintain the internal security and law and order in Transkei.
14. Posts and Telecommunications	Provide postal, telecommunication and banking services and other methods of communication.
15. Prisons	To administer the Prisons' Service in terms of the law.
16. Public Service Commission	To promote efficiency in the administration of the Public Service.
17. Transport	To administer transport matters.

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DEPARTMENT	SUMMARY OF FUNCTIONS
18. Works and Energy	To maintain public works and provide electricity.
19. Welfare and Pensions	To further the social stability of the Transkeian people and administer pension laws.
20. Manpower	To implement the Government's manpower policy.

A number of parastatal bodies have also been established. These are responsible to the individual State Departments which oversee their activities.

At the seat of each magistracy various administrative matters are coordinated and attended to. The head of a magistrate's office — who is a qualified magistrate — also doubles up as the District Commissioner. A District Commissioner is responsible for the general administration of the District concerned by virtue of the powers vested in him by the District Administration Act, 1979 (Act 5 of 1979).

5. CONSTITUTION:

At present Transkei is administered and governed in terms of the Republic of Transkei Constitution Act, 1976 (Act 15 of 1976), as amended and modified by Decree No. 1 of 1988. Decree No. 1 of 1988 has in turn been amended by Decree No. 1 (Constitutional matters) of 1991. The essential aspects of Decree No. 1 of 1988 have already been dealt with above. When the military government took over the reins of powers it provided in explicit terms that all existing laws (including the 1976 Constitution), would continue to operate. Decree No. 1, however, provided that such laws would have to be construed with such modifications, adaptations, qualifications and exceptions as would be necessary to enable such laws to conform with the said Decree (see section 4 of Decree No. 1 of 1988).

The Constitution does not contain a Bill of Rights. Apart from constituting the Republic of Transkei it also deals with the following matters:

- (a) the public seal, national flag, coat of arms, national anthem and languages;
- (b) the Judiciary;
- (c) the vesting of the finances of the country; and
- (d) citizenship;

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- (e) Government land, local government, the Public Service, the designation or appointment of chiefs, the liability of the State in respect of acts of its servants, the binding effect of certain international agreements, the protection of certain emblems and other matters of a general nature.

6. RELEVANT LEGISLATION:

A. CONSTITUTIONAL AND ADMINISTRATIVE LEGISLATION:

- (a) Republic of Transkei Constitution Act No. 15 of 1976; (see also the Territorial Waters Act No. 8 of 1978, Aliens and Travellers Control Act No. 29 of 1977 and the Diplomatic Privileges Act No. 4 of 1984).
- (b) Decree No. 1 of 1988;
- (c) Decree No. 1 (Constitutional Matters) of 1991;
- (d) District Administration Act No. 5 of 1979;
- (e) Interpretation Act No. 4 of 1980;
- (f) Proclamation R142 of 1963 (Electoral Proclamation) (however the operation of this law has been suspended);
- (g) Criminal Procedure Act No. 13 of 1983;
- (h) Supreme Court Act No. 5 of 1983;
- (i) Chiefs' Courts Act No. 6 of 1983;
- (j) Regional Authority Courts Act No. 13 of 1982;
- (k) Transkeian Penal Code No. 13 of 1983;
- (l) Magistrates' Courts Act No. 32 of 1944;
- (m) Public Service Act No. 43 of 1978; (note pension laws and the laws dealing with the three Services);
- (n) Commissions Act No. 8 of 1947;
- (o) Government Contractual Liabilities Act No. 17 of 1987;
- (p) Municipalities Act No. 24 of 1979;
- (q) Transkei Authorities Act No. 4 of 1965;
- (r) Townships Ordinance No. 33 of 1934;

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- (e) Proclamation R293 of 1962 (Regulations for the Administration and Control of Townships);
(also note the laws dealing with valuations, land surveys and the Surveyor-General's office)
- (t) Decree No. 3 (Interpretation Provisions) of 1988;
- (u) Decree No. 4 (Ombudsman) of 1988;
- (v) Decree No. 13 (Enforcement of Foreign Civil Judgements) of 1990;
- (w) Decree No. 15 (Reciprocal Service of Civil Process) of 1990;
- (x) Decree No. 16 (Reciprocal Enforcement of Maintenance Orders) of 1990;
- (y) Decree No. 19 (Judges Remuneration and Conditions of Service) of 1990;
- (z) Admission of Advocates Act No. 74 of 1964;
 - (aa) Attorneys, Notaries and Conveyancers Admission Act No. 23 of 1934; and
 - (bb) Exchequer and Audit Act No. 66 of 1975;

B. PROPERTY LEGISLATION:

- (a) Administration of Estates Act No. 66 of 1965;
- (b) Bantu Administration Act No. 38 of 1927;
- (c) Government Notice No. 1664 of 1929 (Regulations for the Administration and Distribution of Native Estates);
- (d) Deeds Registries Act, 1937 (Act 47 of 1937), as amended by Transkeian Acts Nos. 7 of 1976 and 13 of 1976;
- (e) Various proclamations governing land tenure in rural areas;
- (f) Acquisition of Immovable Property Control Act No. 21 of 1977;
- (g) Companies Act No. 61 of 1973;
- (h) Draft Decree on close corporations;

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- (i) Income Tax Act No. 58 of 1962;
- (j) Transkei Taxation Act No. 8 of 1969;
- (k) Taxation Adjustment Act No. 27 of 1976;
- (l) Decree No. 16 (Value-Added Tax) of 1991;
- (m) Stamp Duties Act No. 77 of 1968;
- (n) Development Tax Act No. 7 of 1984;
- (o) Decree No. 7 (Quitrent Adjustment) of 1991;
- (p) Decree No. 3 (Immovable Property Taxation) of 1991;
- (q) Decree No. 7 (Recovery of State Property or Loss) of 1988;
- (r) Decree No. 8 (Reinsurance of Material Damage and Losses) of 1990;
- (s) Decree No. 8 (Rating of State Property) of 1991;
- (t) State Land Disposal Act No. 23 of 1979; and
- (u) Sea-shore Act No. 17 of 1979.

C. ECONOMIC LEGISLATION:

- (a) Customs and Excise Act No. 91 of 1964;
- (b) Licences Act No. 26 of 1978;
- (c) Corporations Act No. 10 of 1985;
- (d) Decree No. 14 (Lotteries) of 1989;
- (e) Decree No. 17 (Casinos) of 1990;
- (f) Decree No. 3 (Agricultural Bank of Transkei) of 1990;
- (g) Decree No. 4 (Orderly Control of Gambling) of 1990;
- (h) Liquor Act No. 37 of 1978;
- (i) Marketing Act No. 9 of 1985;
- (j) Laws dealing with financial institutions and finance charges;
- (k) National Tourism Act 17 of 1983; and
- (l) Mining laws.

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D. OTHER RELEVANT LEGISLATION.

- (a) Transkeian Apprenticeship Act No. 10 of 1974;
- (b) Decree No. 12 (Labour Relations) of 1990;
- (c) Wage Act No. 15 of 1977;
- (d) Workmen's Compensation Act No. 20 of 1977;
- (e) Training of Artisans Act No. 28 of 1977;
- (f) Factories, Machinery and Building work Act No. 35 of 1978;
- (g) Shops and Offices Act No. 3 of 1979;
- (h) Unemployment Insurance Act No. 11 of 1983;
- (i) Machinery and Occupational Safety Act No. 24 of 1985;
- (j) Medical, Allied and Supplementary Professions Act No. 30 of 1976;
- (k) Nursing Act No. 6 of 1978;
- (l) Medicines and Related Substances Control Act No. 27 of 1978;
- (m) Hazardous Substances Act No. 19 of 1981;
- (n) Health Professions and Related Health Practices Amendment Act No. 15 of 1982;
- (o) Mental Health Act No. 19 of 1981;
- (p) Human Tissue Act No. 4 of 1985;
- (q) Foodstuffs, Cosmetics and Disinfectants Act No. 6 of 1985;
- (r) Atmospheric Pollution Prevention Act No. 14 of 1985;
- (s) Health Act No. 28 of 1985;
- (t) Decree No. 18 (Homeopaths, Naturopaths, Osteopaths and Herbalists) of 1989;
- (u) Education Act No. 26 of 1983;
- (v) Archives Act No. 20 of 1976;

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- (w) Museums Act No. 28 of 1978;
- (x) National Library Service Act No. 11 of 1977;
- (y) Decree No. 6 (Transkei Sports Council) of 1989;
- (z) Decree No. 8 (Transkei Sports and Educational Aid Trust) of 1989;
 - (aa) Marriage Act No. 21 of 1978;
 - (bb) Customary Law of Succession;
 - (cc) Wills Act No. 7 of 1953; and
 - (dd) Succession Act No. 13 of 1934.

(see also the book entitled "Development Information" compiled by the D.B.S.A., the Consolidated Index to Transkeian Legislation compiled by the State Law Advisers, the 1976 agreements (and others) entered into with the R.S.A. and the two sets of indexes relating to T.B.V.C legislation and treaties which were submitted recently to Working Group 4).

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ADDENDUM

CONSTITUTIONAL AND ADMINISTRATIVE LEGISLATION:

- (a) Citizenship of Transkei Act No. 26 of 1976; and
- (b) Municipalities (Audit) Act No. 29 of 1978.

ECONOMIC LEGISLATION:

- (a) Bills of Exchange Act No. 34 of 1964; and
- (b) Hire-Purchase Act No. 36 of 1942.

OTHER RELEVANT LEGISLATION:

- (a) University of Transkei Act No. 23 of 1976; and
- (b) Abuse of Dependence-producing Substances and Rehabilitation Centres Act No. 41 of 1971.

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